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Childs, John

From: Ashton, David
Sent: Tuesday, July 31, 2001 1:40 PM
To: Childs, John
Subject: RE: Draft Clarification of Regulatory Status of De-watered Material in Rehandle Facility

with those assumptions, it just becomes part of the soil matrix and is unregulated.

-----Original Message-----

From: Childs, John
Sent: Tuesday, July 31, 2001 1:25 PM
To: Ashton, David
Subject: RE: Draft Clarification of Regulatory Status of De-watered Material in Rehandle Facility

good email and good letter. One question: assuming Ed is ok with the language, are we still ok if we want to move the material to a different location than 602, now or in the future?

-----Original Message-----

From: Ashton, David
Sent: Tuesday, July 31, 2001 9:06 AM
To: Koshuta, Cheryl; Childs, John; Degens, Sebastian; Sperry, Dorothy
Cc: Hermans, Marcel; Quinn, Padraic (Pad); Bispham, Tom; Ring, Jeffery (Jeff); Gibson, Mary; Harbert, Trey
Subject: RE: Draft Clarification of Regulatory Status of De-watered Material in Rehandle Facility

Acknowledging Cheryl's comment that DEQ's interpretation (see the tail end of this email) of the Port's needs from the recent conversation with John and Dorothy promises to dig us a deeper hole than even that created by the July 2, 2001 letter, attached is a draft that might at least enable us to move the material sitting in the rehandle facility. It is not intended to solve the long-term problem, which, at a minimum, will require management level discussions with DEQ to get them to accept that dredged material destined for land disposal does not become a regulated solid waste until (1) the material is determined to be "waste-like" (i.e., useless, valueless) and (2) the placement constitutes a wo/man-made environmental or human health impact exceeding appropriate risk-based criteria.

Please comment on whether from your unique perspectives you think the attached letter would solve the short term regulatory issues (federal and state environmental and local land use) associated with moving de-watered material from one end of T6 to the other. I think we need to suggest some alternative letter to Drubeck to save him from the embarrassment of possibly sending out his "\$10 dollar" analysis (below).

David

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-----Original Message-----

From: Koshuta, Cheryl
Sent: Friday, July 27, 2001 12:02 PM
To: Childs, John; Ashton, David; Degens, Sebastian; Sperry, Dorothy
Cc: Hermans, Marcel; Quinn, Padraic (Pad); Bispham, Tom
Subject: RE: Draft Clarification

I think we need to discuss elevation of this issue within DEQ. Continuing to work with Ed is too narrow. I agree that David and Dorothy and John need to meet to develop a plan. Please keep me informed of progress on this. I am concerned that we are letting the solid waste folks dig us into a hole that we do not need to be in. I also don't think we should get anything else in writing from DEQ (email or otherwise) until we can sort this out. Also, I think Tom Bispham may be a useful resource in developing an overall DEQ strategy.

-----Original Message-----

From: Childs, John
Sent: Wednesday, July 25, 2001 1:41 PM
To: Ashton, David; Degens, Sebastian; Sperry, Dorothy
Cc: Hermans, Marcel; Quinn, Padraic (Pad); Koshuta, Cheryl
Subject: RE: Draft Clarification

Continuing with the "short term/long term" plan, I propose the following:

- (1) David and I meet tomorrow to discuss the needs of the letter for the short term. I will try to talk with Mary Gibson before then.
- (2) Dorothy, David, and I meet next week to discuss the long term plan (eg: how to get DEQ to better define contaminated sediments). We should also identify any clarifications necessary to include in this letter.
- (3) David and I (and Dorothy if she wants) call Ed Druback to discuss the comments to his draft. We can also talk about the longer term plan of attack, as a team.

-----Original Message-----

From: Ashton, David
Sent: Wednesday, July 25, 2001 12:20 PM
To: Childs, John; Degens, Sebastian; Sperry, Dorothy
Cc: Hermans, Marcel; Quinn, Padraic (Pad)
Subject: RE: Draft Clarification

To be more specific: what happened to the DEQ's answer to our only question: Is the activity of moving dewatered material across our site to another area not subject to permitting as a "disposal site" because it is equivalent to "soil or other non-decomposable material"? Why are they giving us all this other junk? David

-----Original Message-----

From: Childs, John
Sent: Wednesday, July 25, 2001 10:20 AM
To: Ashton, David; Degens, Sebastian; Sperry, Dorothy
Cc: Hermans, Marcel; Quinn, Padraic (Pad)
Subject: RE: Draft Clarification

Attached is Ed Druback's clarification. Please review and get me your comments by end of today OR at latest noon on Thurs. Thank you.

-----Original Message-----

From: DRUBACK.Ed@deq.state.or.us [mailto:DRUBACK.Ed@deq.state.or.us]
Sent: Wednesday, July 25, 2001 10:06 AM
To: childj@portpfd.com
Cc: MORSHED.Monty@deq.state.or.us; DRUBACK.Ed@deq.state.or.us
Subject: Draft Clarification

John:

Here is our first cut of the body of the follow up letter:

In the Port's discussions with Monty Morshed and our meeting of July 17, 2001; the Port of Portland has requested a few clarifications of the Department's letter of July 9, 2001.

Basically these questions centered on three subject areas:

1. The Department's definition of "contaminated sediments"
2. The Department's definition of "solid waste"
3. How do these rules 'fit' together with respect to the Department's determinations in our letter of July 9, 2001.

(1) As you are aware, the Department has not defined 'contaminated sediments' in any of our solid waste, hazardous waste, water quality or cleanup rules or statutes. In the absence of a definition in rule or statute, the Northwest Region Solid Waste Program has taken the approach that may be described as 'purist.' Simply stated: contaminated sediments are those that contain a hazardous or other substance caused by human activities, and which would not occur naturally at that level in the absence of human activity. Contaminated sediments are capable of

negatively impacting human health or the environment but are not necessarily toxic. Contaminated sediments may be "inert" as they may not adversely impact the waters of the state or public health.

(2) The Department's rules and statutes define solid waste quite explicitly. The definitions are contained in OAR 340-93-0030(82) and ORS 459.005(24). The example that I use most frequently to illustrate what is meant by these definitions is this: I have a ten-dollar bill in my hand and state: "Ten dollars does not even fill up my gas tank anymore;" and throw the bill on the floor. From the moment the bill leaves my hand - it is solid waste. The Department's solid waste rules however contemplate that some useless or discarded items may be either of some value or not requiring regulation due to their lack of (or minimal) impact on human health and the environment. Therefore, the Department has defined certain items as "clean fill" (OAR 340-93-0030(13)), together with other exemptions in OAR 340-93-0050(3), which are exempt from solid waste regulations. The Department has also defined a procedure in OAR 340-93-0080(2) for generators of solid waste to exempt their waste from being regulated.

(3) The Department's conclusion is: based upon the information provided by the Port with respect to this project and our interpretation of the definitions of contaminated sediments and solid waste, the sediments in this project need not be regulated as solid waste. The process that the Department used to come to this conclusion were:

1. Are the sediments a solid waste?

Yes

2. Are the sediments by definition clean fill?

No

3. Are the sediments hazardous waste?

No

4. Did the Port provide sufficient information for the Department to determine whether the sediments should be considered exempt from solid waste regulations?

Yes

5. Based on the Department's review of the level of contamination in the sediments, are the sediments substantially the same as clean fill (inert) and therefore exempt from SW regulation as set forth in OAR 340-93-0080(2):

Yes

Also, given these definitions, the Department's Northwest Region Solid Waste program can thereby classify sediments in four categories:

1. Clean sediments: Those sediments that contain no contaminants introduced by human activities.

2. Contaminated sediments determined to be "inert" and therefore, not regulated as solid waste: Those sediments that contain contaminants but at a level that pose no threat to human health and the environment and therefore are not regulated.

3. Contaminated sediments regulated as solid waste: Those sediments that contain contaminants at a level which if not regulated as solid waste would pose a threat to human health and the environment.

4. Contaminated sediments regulated as hazardous waste: Those sediments that contain contaminants at a level exceeding hazardous waste triggers and require management as a hazardous waste.

The Department's determination is that the sediments subject to this discussion fall into category 2.

Based upon the Port's clarification of the scope of its original request, the Department modifies its prior response of July 2, 2001 as follows.

The Port requested a determination of whether the activity of moving de-watered dredged material across Terminal 6 from the Dredge Material Rehandle Facility location to Berth 602 would trigger permitting under OAR 340-093-0050(1). That provision specifies that "no person shall establish, operate, maintain or substantially alter, expand, improve or close a disposal site, and no person shall change the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department." OAR 340-093-0050(1) ("Permit Required"). The Port sought a determination that the de-watered material fell within the definitional exclusion from "disposal site" for "a site that is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material." OAR 340-093-0030(30) ("Definitions").

Based upon the information submitted by the Port as summarized in the Department's letter of July 2, 2001, the Port has demonstrated that the dewatered material currently at the Dredge Material Rehandle Facility location is equivalent to "soil, rock, concrete or other similar non-decomposable material." Consequently, the Port's proposed activity does not trigger permitting under OAR 340-093-0050(1).

In addition, the Department would not regulate the dewatered material as solid waste, based on the information supplied. Even assuming that the material can be classified as a "waste," the level of contaminants in the material reflects that it is substantially the same as "clean fill" or "inert" material, as defined in OAR 340-093-0030(13) and (46), respectively. The submission by the Port reflects that placement of the de-watered material as fill in the upland portion of Berth 602, Terminal 6 will not adversely impact waters of the state or public health.

Have approval for short term that
does not hurt us
for the long term

~~Can~~

our meeting

Based on additional information
reconsidered our original letter

2 wed pm OK
for David